D.B.CIVIL SPECIAL APPEAL (W) NO. 172/2006
Omveer Singh v. State of Rajasthan & Anr.

Date of order : 03.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri R.A.Katta for the appellant

This special appeal has been filed challenging the order of the learned Single Judge dated 3.8.2005 in S.B.Civil Writ Petition nos. 1974/2004 and 8209/2004 as well as the order dated 7.11.2005 in S.B.Civil Review Petition no. 149/2005. By the former order, the writ petitions were disposed of with the consent of the counsel for the parties with a direction that neither party shall make any claim against each other. By the latter order the petition seeking review of the said former order was dismissed.

The dispute relates to the retiral dues. Certain recoveries were sought to be made from the appellant while the appellant too claimed additional payment from the Department. The learned Single Judge observed that payment already made to the appellant should not be recovered but at the same time the appellant should not pursue his claim against the respondents. The learned Judge passed order to this effect with consent of the counsel for the parties. The case of the appellant in the present appeal is that no

such consent was given. We regret our inability to accept the submission. The order apparently was dictated in open court. If there was any error it should have been pointed out then and there so that the order could be properly framed by the learned Judge. Petition was filed for review of the order but it was rejected. It is relevant to mention here that in the review petition there was no such averment that counsel for the parties did not give consent for the disposal of the writ petitions in terms mentioned in the order.

Counsel for the appellant finally submitted that recoveries were made from the appellant even after 3.8.2005 i.e. after passing of the order. There is no such statement in the memo of appeal. When this was pointed out, counsel sought time to file affidavit to that effect.

Having regard to the mandate of the order of this Court, we do not think any affidavit is required, for, if it is a fact that any recovery was made after 3.8.2005, the same will have to be refunded to the appellant. We direct accordingly.

With above observations the appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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